

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

BORIS O. BERGUS

Plaintiff,

v.

AGUSTIN M. FLORIAN

Defendant.

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) Civil Action No. 18-10323-DPW
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**STIPULATION OF THE PARTIES REGARDING JURY TRIAL COMMENCING
MONDAY JANUARY 9, 2023 AT 9:00 AM**

As directed by the Court at the October 14, 2022 Scheduling Conference the parties, plaintiff Boris O. Bergus, and defendant Agustin M. Florian, file this Stipulation.

As of this date the parties have no intention to pursue mediation prior to trial.

The jury trial will not include the defendant's counterclaim. The jury trial will determine whether the defendant is liable to the plaintiff under the Massachusetts Uniform Securities Act, Mass. Gen. Law ch. 110A. Plaintiff to file any waivers of pleaded claims under §410(a)(1) and/or § 410(b) no later than December 16, 2022.

PRELIMINARY STATEMENT AS TO DAMAGES. It is undisputed the plaintiff invested a total of \$375,000. The damages are specified by statute, namely the \$125,000 paid by the plaintiff in September 2012 and an additional \$250,000 paid by the plaintiff in May 2014, with 6.00% interest per year from the date of each payment, costs and an award of reasonable attorneys' fees.

There are three fact witnesses who will testify at the trial, the plaintiff Boris O. Bergus, the defendant Agustin M. Florian, and Jose Antonio Baca. Each witness will be a fact witness as to liability and/or defenses to liability.

Defendant represents to the Court that the witness Jose Antonio Baca who resides in Peru will appear in person and be available to testify for plaintiff and/or for defendant on any day that week commencing January 9, 2023. This witness who speaks only Spanish will require a court approved translator. The parties will confirm the identity and the availability of the translator to appear at trial by December 16, 2022.

Subject to the Court's approval, the case will be called for **pretrial conference on December 16, 2022 at 2:00 pm** in the John Joseph Moakley Courthouse Courtroom No. 1, 3rd floor. Unless excused by the Court, each party shall be represented at the pretrial conference by counsel who will conduct the trial. Counsel shall have further conferred with their clients and with each other no later than (7) days before the pretrial conference to explore the possibilities of settlement and shall be prepared to advise the Court as to the prospects of settlement.

Counsel to the Parties shall confer on or before November 11, 2022 to discuss and seek agreement on proposed stipulated exhibits. Counsel to the Parties shall confer on or before November 22, 2022 to discuss and seek agreement on a statement of facts to be submitted to the jury as stipulated or admitted.

Counsel to the Parties shall confer on or before December 15, 2022 for the purpose of preparing, preferably jointly, a Pre-Trial Memorandum for submission to the Court no later than Friday December 16, 2022.

PRETRIAL MEMORANDUM – CONTENTS

The pretrial memorandum shall set forth:

1. The names, addresses and telephone numbers of trial counsel;
2. That the case is to be tried to a jury;
3. A concise summary of the evidence that will be offered by each of the plaintiff and defendant with respect to solely liability and/or defenses under the Massachusetts Uniform Securities Act, Mass. Gen. Law ch. 110A§410(a)(2);
4. The facts established by pleadings or by stipulations or by admissions of

counsel. In particular, counsel shall stipulate all facts not in genuine dispute;

5. Contested issues of fact;
6. Any jurisdictional questions;
7. Issues of law, including evidentiary questions, together with supporting authority;
8. Any requested amendments to the pleadings;
9. Any additional matters to aid in the disposition of the action.
10. The probable length of trial; and,
11. An identification by inclusive page and lines of any portions of depositions or interrogatory responses to be offered at trial and a precise statement of any objections thereto.

SEPARATE FILINGS TO BE CONCURRENTLY FILED WITH PRETRIAL
MEMORANDUM

1. requests for jury instructions with citation to supporting authority;
2. any proposed interrogatories or special verdict forms;
3. motions in limine or other requests regarding foreseeable disputes concerning evidentiary or other issues, including authority for the ruling requested.

POST PRETRIAL CONFERENCE FILINGS

On or before January 5, 2023 the parties shall electronically file in the form prescribed by the Court's standing Order:

1. a list of exhibits to be introduced without objection, identified by a single sequence of numbers;
2. a list of marked items to be offered at trial, as to which a party reserves the right to object, identified by a single sequence of capital letters, regardless of which party is the proponent of an exhibit; and,
3. the parties agree to file any amendments of the "agreed" exhibits or "opposed" exhibits on or before January 9, 2023

Voir dire procedures:

Proposed jury selection procedures and a concise statement of the reasons therefor, names and addresses of witnesses to be read to the potential venire, proposed description of the case to be read to potential venire. Parties propose that their Voir Dire proposals will be filed by January 4, 2023.

<p>Respectfully Submitted,</p> <p>Defendant, AGUSTIN M. FLORIAN By his Attorney,</p> <p><u>/s/ Ryan C. Siden</u> Ryan C. Siden BBO No. 646138 Siden & Associates, P.C. 20 Park Plaza, Suite 505 Boston, MA 02116 Ph: (617) 423-5999 Email: rsiden@sidenlaw.com</p>	<p>Plaintiff, BORIS O. BERGUS By his Attorney,</p> <p><u>/s/ Richard A. Goren</u> Richard A. Goren, Esq. BBO #203700 Law Office of Richard Goren 29 Crafts Street, Suite 500 Newton, MA 02458 Ph: 617-933-9494 rgoren@richardgorenlaw.com</p>
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Dated: November 8, 2022

CERTIFICATE OF SERVICE

I, Ryan C. Siden, counsel for Defendant Agustin M. Florian hereby certify that a true copy of the document attached hereto has been served via the ECF System on all counsel of record this day and on every other party not registered via U.S. First Class Mail.

/s/ Ryan C. Siden
Ryan C. Siden